

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5676**

**PETITION OF CHARLES SULLIVAN**

(Hearings Held November 14, 2001 and February 6, 2002)

**OPINION OF THE BOARD**

(Effective date of Opinion, March 6, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(a) and 59-B-3.1. The petitioner proposes to construct a first floor covered porch that requires a 1.5 foot variance as it is within 20.50 feet of the front lot line and a second floor covered porch that requires a 1.5 foot variance as it is within 20.50 feet of the front lot line. The required front lot line setback is twenty (22) feet.

Helen Lynn Primo, Esquire, represented the petitioner at the public hearing.

The subject property is Lot 22, Block 8, Westboro Subdivision, located at 7901 Pearl Street, Bethesda, Maryland, in the R-60 Zone, (Tax Account No. 00539448).

Decision of the Board: Requested variances **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The originally proposed first floor covered porch required a variance of six (6) feet and the proposed second floor covered porch required a variance of 4.50 feet. The variance request was later amended for a 1.50 foot variance for the proposed first floor covered porch and a 1.50 foot variance for the proposed second floor covered porch. See, Exhibit Nos. 25(a) through 25(d).
2. The petitioner testified that the original residence was demolished and reconstructed and that the proposed first and second floor covered porches would be sited no further than the previously existing covered porch.

**FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The variance request complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific piece of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or undue or exceptional or undue hardship upon, the owner of such property.*

The original covered porch had existed for 15 years. The Board finds that the 15-year existence of the original covered porch and the fact that the proposed first and second floor covered porches would extend no further than the previously existing covered porch is an exceptional circumstance. The Board observes that this finding is consistent with the policy set forth in Court and Judicial Proceedings Article, Section 5-114, which bars the government from proceeding against a structure, in violation of the setback restrictions, which has been in existence for more than 3 years.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the proposed construction of a first floor and a second floor covered porch are the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variances will not impair the intent, purpose or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains no testimony or correspondence in opposition to the variance request and the Board finds that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of 1.5 feet from the required twenty-two (22) foot front lot line setback for the construction of a first floor covered porch and of 1.5 feet from the required twenty-two (22) foot front lot line setback for the construction of a second story covered porch are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, by the testimony of his witnesses and the representations of his attorney, to the extent that such evidence and representations are identified in the Board's opinion granting the variance.
2. Construction must be completed according to the amended plans entered in the record as Exhibit Nos. 25(a) through 25(d).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above titled petition.

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 6th day of March, 2002

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board may be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.